

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL J. COLEMAN,)	
)	
Plaintiff,)	8:04CV97
)	
v.)	
)	
MARK STOKEY, BRYAN EDINS,)	MEMORANDUM AND ORDER
JAMES CARMAN, THOMAS NESBIT,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	
)	

Timothy Ashford has moved to withdraw as counsel for the plaintiff. Filing 50. This court's filing 52 order granted the motion to withdraw "effective upon the filing of a certificate of service or affidavit indicating that the plaintiff has been served with a copy of this order." Filing 52.

Filing 52 was entered on October 27, 2005 and gave the plaintiff twenty days from the date of the order, that being November 16, 2005, to have new counsel enter an appearance on his behalf, file a motion along with supporting evidence for appointment of counsel by the court, or advise the court that he will proceed without counsel. The order stated that "[i]f none of these actions is taken within the next twenty days, this case will be subject to dismissal." Filing 52.

The court notes that Mr. Ashford filed a motion to appoint counsel for the plaintiff on November 7, 2005, (filing 53), but this motion was not supported by any evidence of plaintiff's present financial status or his reasons for believing counsel should be appointed. To date, no substitute counsel has appeared on the plaintiff's behalf, and the plaintiff has not advised the court that he intends to appear without counsel. Therefore, assuming the plaintiff himself was served with a copy of the

filing 52 memorandum and order, this case would be subject to dismissal.

However, it appears from the record that the plaintiff was never advised of or served with a copy of filing 52. The filing 53 motion for appointment of counsel states Mr. Ashford had not, as of November 7, 2005, had contact with the plaintiff. The court's record states that Mr. Ashford mailed his motion to withdraw to the plaintiff on November 10, 2005. This certificate of service includes the plaintiff's home address. Filing 54. However, there is no certificate of service indicating that filing 52 was ever served on plaintiff Michael J. Coleman.

This case has been pending for twenty months, some claims were dismissed (see filing 35), and the remaining claims must now progress for final resolution of this case.

IT THEREFORE HEREBY IS ORDERED:

1. The Clerk of the District Court shall serve a copy of this order on the plaintiff by mailing it to him at the address set forth in filing 54. Counsel's motion to withdraw, filing 50, is granted, effective upon such service by the clerk.
2. Plaintiff is given 20 days from the date of this order in which to either: (1) obtain the services of substitute counsel and have that attorney file an appearance in his behalf; (2) file a motion in this court for the appointment of counsel, setting forth his present financial status, and the reasons he believes counsel should be appointed; or (3) indicate, by pleading, that he will proceed in this case without counsel. If none of these actions is taken within the next twenty days, this case will be subject to dismissal.

Dated this 28th day of November 23, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge